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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/265,214	03/10/1999	BRUCE A. PHILLIPS	1552(USW-050	4266

22193 7590 11/17/2004

QWEST COMMUNICATIONS INTERNATIONAL INC  
LAW DEPT INTELLECTUAL PROPERTY GROUP  
1801 CALIFORNIA STREET, SUITE 3800  
DENVER, CO 80202

EXAMINER
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HYUN, SOON D

ART UNIT	PAPER NUMBER
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2663

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

28

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/265,214	PHILLIPS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Soon D Hyun	2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9, 11, 19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 11, 19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bremer et al (U.S. Patent No. 6,580,785) in view of Kobayashi et al (U.S. patent No. 4,596,011).

Regarding claims 9 and 19, Bremer et al discloses a broadband communication system utilizing xDSL technologies comprising:

- an upstream xDSL modem (13 in FIG. 2) in a central office (11);
- a twisted pair (27, 47) connected to the upstream xDSL modem;
- a plurality of taps defined along the twisted pair (47);

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a plurality of downstream xDSL modems (50), each downstream xDSL modem being in communication with corresponding tap of the plurality of taps, the upstream xDSL modem and the plurality of downstream xDSL modems providing packet-based (FIG. 6, col. 8, lines 11-17) point-to-multipoint communication (FIG. 8, col. 9, lines 22-39) between Bremer et al.

However, Bremer teaches a TDMA or FDMA access protocol for the system (col. 2, lines 9-25), but does teach a contention based access protocol.

Kobayashi et al teaches a CSMA/CD (a contention-based access protocol) between a headend and a plurality of modems (FIG.5). Those of skilled in the art would have been motivated by Kobayashi et al to incorporate the CSMA/CD into Bremer so that plurality of modems could access the common medium whenever the medium is free. Therefore, it would have been obvious to one having ordinary skill to adopt a contention-based access protocol into Bremer.

Regarding claims 11 and 21, refer to the discussion for claims 9 and 19.

However, Bremer does not explicitly teach that the upstream xDSL modem is operative to transmit to the plurality of downstream xDSL modems in a broadcast-based protocol. However, Bremer teaches a digital TV (56) connected to a downstream xDSL modem to receive a TV program. Therefore, it would have been obvious to one having ordinary skill in the art to incorporate the broadcast-based protocol into Bremer to broadcast a TV program from the upstream modem to the plurality of TVs.

***Response to Arguments***

4. Applicant's arguments filed 08/09/2004 have been fully considered but they are not persuasive.

Regarding claims 9 and 19, Applicant argues that there is no motivation to combine a contention-based protocol into Bremer to achieve the claimed invention.

Examiner disagrees. As discussed above, the CDMA/CD is a well-known contention based access protocol, i.e., when a shared medium is free, any communication device connected to the shared medium could access the medium and Kobayashi et al uses the protocol for point to multipoint modem communications. Therefore, it would have been obvious to use a contention based access protocol for Bremer.

Regarding claims 11 and 21, Applicant argues that the Examiner has not provided motivation to make such modifications to Bremer. The motivation, i.e., to broadcast a TV program from the upstream modem to the plurality of TVs when more than one TV is connected, is provided in the above discussion for the claims.

For reasons discussed above, Examiner believes that the claim rejection is proper.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*g*

S. Hyun  
11/09/2004

*Chau T. Nguyen*

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